

**MINUTES
HEARING OFFICER
May 5, 2015**

Minutes of the regular public hearing of the Hearing Officer, of the City of Tempe, which was held at the Council Chambers, 31 East Fifth Street, Tempe, Arizona.

Present:

Vanessa MacDonald, Hearing Officer
Steve Abrahamson, Planning & Zoning Coordinator
Sherri Lesser, Senior Planner
Karen Stovall, Senior Planner
Sarah Adame, Administrative Assistant II

Number of Interested Citizens Present: 10

Meeting convened at 1:35 PM and was called to order by Ms. MacDonald. She noted that anyone wishing to appeal a decision made by the Hearing Officer would need to file a written appeal to that decision within fourteen (14) days, by May 19, 2015 at 3:00 PM, to the Community Development Department.

Before hearing the cases, Ms. MacDonald noted that item #4 will be continued to the May 19, 2015 Hearing Officer by the request of city staff.

Ms. MacDonald stated that she would review items #2 and #3 out of order today.

1. CONSIDERATION OF MEETING MINUTES: April 21, 2015

Ms. MacDonald noted that the Hearing Officer Minutes for April 21, 2015 would be continued to May 19, 2015 for review and approval to allow for more review time of assigned Conditions of Approval.

2. Request approval for a Use Permit for an animal kennel and outdoor dog run for TEMPE DOG 24/7 (PL150115), located at 937 East Broadway Road. The applicant is Drew Wood, Grant L. Olds Architects.

Karen Stovall presented the case. She indicated that the site is located within the Broadway Shopping Center near the southeast corner of Rural and Broadway Roads. The property on the east is a storage facility; the property to the south is a ball field associated with a church and a school. The business occupies a 5637sq. ft. area. Business services include daycare, boarding, and grooming. Daycare and grooming services are from 8am to 8pm and overnight boarding is located inside the building. The applicant proposes an outside dog run on the south side of building that is approximately 1500 s.f. The area will be enclosed by an 8 ft. block wall and covered by a fabric canopy with gates on the east and west side. Employees would be outside with the dogs in the dog run.

A neighborhood meeting was not required with this application. Five (5) e-mails of opposition this request have been received citing concern with the noise generated from the dogs from the dog run. Based on the Information from the applicant and use permit findings request approval of permit with stipulation that an employee be outside with dogs at all times so that they are not unattended.

Ms. MacDonald recommended a condition of approval be added to have the applicant return in six months to the hearing officer to revisit the use and how things are going.

Ms. Stovall noted that the applicant would be opening in July of 2015 so the six (6) months would be from that opening day.

Ms. MacDonald agreed.

Ms. MacDonald asked applicant if he had read staff report and agrees to those conditions of approval including stipulation #8 that he would come back in six (6) months to review use permit.

Mr. Grant L Olds said that he does agree and also addressed the sound issue and operations. Mr. Olds, noted that the operator is in his sixth year and this is the third facility in operation. It is a 24/7 facility. The business model is an interior, a/c facility, exterior is used for dog potty and dogs will always be supervised. Owner has 28 employees total over all facilities, and other facilities are closer to residential neighborhoods. Applicant reviewed size and build of dog run and noted the comparison of research studies regarding noise travel in regards to distance from facility toward residences. He noted that the client use of the facilities should have minimal impact on the residences regarding noise based on the historical data as well as thru the lease of the facilities. The lease stipulates that client outside areas are not to be used after 9pm at night and the city stipulates that there is no use of the outside after 10pm. The 24hr operation is internal not an external operation.

Ms. MacDonald stated that she understands that there shouldn't be any issues with noise based on the stipulations from the lease and city ordinance about outside use at night time.

Ms. MacDonald called for public comment:

Ms. Karen Hyde, Tempe, expressed that she is very upset about the dog run, noise, pollution, smell and flies. She expresses that it would destroy the quality of life. She doesn't feel that anything that applicant explained gave her any comfort. Ms. Hyde pointed out her residence on the map for Ms. McDonald and Mr. Olds.

Ms. Connie Vekre, Tempe, pointed out that the location of her property on the map. She expressed her concerns about the issue of the barking and feels that there is no control over barking based on her past experiences. Ms. Vekre was curious if the other two locations went through the same processes as this one? She likes the idea that in 6 months that this use permit would be reviewed. She was curious what would be required from the neighbors to not see this come in? She asked, if dogs from other facilities would be brought in to use this dog run? Ms. Vekre wanted to clarify if people will be picking up their dogs up at 2 am in the morning or if they can only pick up and drop off only during regular business hours?

Ms. MacDonald assured Ms. Vekre that the applicant will address her concerns.

Ms. Mary Hoyt, Tempe, pointed out her property on the map. Ms. Hoyt expressed as the closest neighbor to this proposed business, the noise pollution that would be present at this business would be unacceptable. Ms. Hoyt said that she called the other 2 facilities and they said that they don't have a large area that the applicant proposes to have at this facility 1500sq ft. dog run with walls and the top would be fabric. She continued to express her and her husband's research regarding noise and loud sounds based on decibels could be damaging. Ms. Hoyt is concerned that her lot is large and they had completed a lot of remodeling in her back lot and the she spends a lot time outside in the back. She states that she understands that dogs will be supervised and that she likes dogs but she doesn't like dogs barking. Ms. Hoyt stated that she can get signatures and names of all her neighbors if needed but they don't want the dog run there. She and her neighbors don't want the noise in their neighborhood.

Mr. Vince Herman, Tempe, pointed his mother's residence and his residence on the map. Mr. Herman expressed his and his mother's concerns of the effect on the neighboring school and church. Mr. Herman stated that anyone is aware of any noise from those buildings. Mr. Herman expresses that barking dogs are the biggest complaints that many cities have. His reason

for appearing here today is to express his objection to the dog run and close approximately to the church, homes, and the consumer perspective of that particular use of that area. He goes on to express that nature of the high wall creates a sound effect there.

Ms. MacDonald called the applicant to return to clarify public questions.

Mr. Olds explains that in comparison to Wiggles n Waggs, who have a 6ft wall and shades sails that only shade up to 60 percent while Tempe Dogs is 8ft tall with a canopy top with 100 percent shade. All the facilities have dog runs. He also stated that there will not be any transferring of dogs from one facility to another. Mr. Olds expressed that the dog run is not the kennel, it's a run for the dogs to take their potty breaks and that the dogs won't be out there for long periods of time.

Ms. MacDonald confirms that this facility is to care for the dogs inside and not to be kept outside, which is what customers are paying for.

Mr. Olds continues to explain that customers would only be able to pick up their dogs during regular business times other than that the customer would have to call and make arrangement outside of those hours. Mr. Olds explains that they don't anticipate any additional traffic and are not providing any other additional parking for anything else. Mr. Olds want to be a good neighbor and is open to explore other options to be neighborly. Also, would look at the use for fluid walls used for sound emptying that is used for freeways which absorbs the sound inside the walls or offer a study if it would do any good. Also, wants to note that the other facilities have not had any other complaints.

Ms. McDonald expresses that granting the use of the Permit would not contribute to the deterioration of the neighborhood no down grade property values and is compatible with existing surrounding structure uses and again based on the operational details that there would be adequate contrail of behavior both inside and outside of the premises.

Ms. MacDonald noted that this request meets the criteria for a use permit:

- Any significant increase in vehicular or pedestrian traffic.
- Nuisance arising from the emission of odor, dust, gas, noise, vibration, smoke, heat or glare at a level exceeding that of ambient conditions.
- Contribution to the deterioration of the neighborhood or to the downgrading of property values, the proposed use is not in conflict with the goals, objectives, or policies for rehabilitation, redevelopment or conservation as set forth in the city's adopted plans or General Plan.
- Compatibility with existing surrounding structures and uses.
- Adequate control of disruptive behavior both inside and outside the premises which may create a nuisance to the surrounding area or general public.

DECISION:

Ms. MacDonald approved PL150115/ZUP15042 subject to the assigned Condition of Approval:

1. This Use Permit is valid only after a Building Permit has been obtained and the required inspections have been completed and a Final Inspection has been passed.
2. The Use Permit is valid for the plans as submitted within this application. Any additions or modifications may be submitted for review during building plan check process.
3. If there are any complaints arising from the Use Permit that are verified by a consensus of the complaining party and the City Attorney's office, the Use Permit will be reviewed by City staff to determine the need for a public hearing to re-evaluate the appropriateness of the Use Permit, which may result in termination of the Use Permit.
4. Animals shall be attended by staff during entire outdoor time and brought into the facility if noise becomes a disturbance. No animals shall be left unattended outdoors.
5. All nonconforming building lighting shall be removed and replaced with compliant light fixtures. Details can be resolved during Building Safety Plan Review.

6. All rear exit doors require a lexan vision panel. Details to be approved through Building Safety Plan Review.
 7. Development Plan Review approval for the outdoor area and proposed shade canopy on the south side of the building is required. Obtain all necessary Development Services clearances and permits for structures in this area.
 8. **The applicant shall return to the Hearing Officer on January 5, 2016 for a review of compliance with these conditions. ADDED BY HEARING OFFICER**
3. Request approval for a Use Permit to allow an offsite subdivision advertising sign for **THE NEWPORT (PL150149)**, located at 1106 East Weber Drive. The applicant is Joe Risi.

Sherri Lesser presented the use permit request for an off-site advertising sign for 1359 N Scottsdale Rd. She noted that all the processing for permits have been done for 1106 E Webb Drive. The sign will be located on that vacant lot. She has received input from several residents about why the sign is there and what is the purpose of the Use Permit. She stated that she reviewed a provision that when the sign is erected that she will go out and verify that it is in the correct area to be posted. She said that Mr. Risi is ok with that provision.

Ms. MacDonald stated that she did review the conditions of the approval in the staff report.

Ms. MacDonald is requesting that staff start bullet pointing items when we want to call attention to a particular provision.

Ms. Lesser agreed to add a bullet point to direct the applicant to the City Ordinance for off -site signs.

Ms. MacDonald called applicant to podium.

Mr. Joe Risi requested a sign to be posted on Webber and Scottsdale Rd to direct traffic to his project. Mr. Risi expressed completing project model in three weeks. He also stated didn't see copy of staff report of stipulations.

Ms. MacDonald, reviewed conditions and provisions for Use Permit for the sign with Mr. Risi.

Mr. Risi said that he does agree to those conditions and provisions.

Ms. MacDonald called for public comments and there were none.

Ms. MacDonald noted that this request meets the criteria for a Use Permit:

- Any significant increase in vehicular or pedestrian traffic.
- Nuisance arising from the emission of odor, dust, gas, noise, vibration, smoke, heat or glare at a level exceeding that of ambient conditions.
- Contribution to the deterioration of the neighborhood or to the downgrading of property values, the proposed use is not in conflict with the goals, objectives, or policies for rehabilitation, redevelopment or conservation as set forth in the city's adopted plans or General Plan.
- Compatibility with existing surrounding structures and uses.
- Adequate control of disruptive behavior both inside and outside the premises which may create a nuisance to the surrounding area or general public.

DECISION:

Ms. MacDonald approved PL150149/ZUP15053 subject to the assigned Condition of Approval:

1. The use permit is valid for Newport Development and may be transferable within the allowable 24 month time frame to successors in interest through an administrative review with the Development Services Manager, or designee.

2. Any intensification or expansion of this use shall require the applicant to return to the appropriate decision-making body for a new use permit.
3. If there are any complaints arising from the use permit that are verified by a consensus of the complaining party and the City Attorney's office, the use permit will be reviewed by city staff to determine the need for a public hearing to re-evaluate the appropriateness of the use permit.
4. No outdoor speakers associated with the subdivision advertisement shall be allowed.
5. The sign to be installed out of sight visibility triangles
6. Obtain all necessary clearances and permits from the sign section.
7. The sign to be removed within 24 months or when all lots are sold, whichever occurs first.

4. Request for a Use Permit to allow a 60' monopole and equipment for **VERIZON PHO STRAY CAT (PL150037)**, located at 2425 East University Drive. The applicant is Steve Ciolek, Coal Creek Consulting

DECISION:

Ms. MacDonald continued this item for May 19, 2015 by City Staff request.

STAFF ANNOUNCEMENTS

1. Change in schedule in June. Hearing Officer hearing for the Tuesday June 16, 2015 will be held on Wednesday June 17, 2015.
2. Beginning July 2015 Hearing Officer Meetings will be held in the evenings . . .they will begin with a Study Session at 4:30 pm followed by the Hearing beginning at 5:00 pm with abatement cases to be held first and then the Regular Session.
3. Announced Administrative Assistant, Steve Nagy has left the City of Tempe to pursue another career path.

The next Hearing Officer public hearing will be held on May 19, 2015.

With no further business, the public hearing adjourned at 2:34 pm.

Prepared by: Sarah Adame, Administrative Assistant II+
Reviewed by:



Steve Abrahamson, Planning & Zoning Coordinator
for Vanessa MacDonald, Hearing Officer

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